IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4883 OF 2005

Altaf Hanif Jakhura ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.A.P.Mundargi i/b Ms Rupali Bhosale for the Applicant
Ms Rajeshree Gadhvi,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 4,2005

P.C.:

1. Heard learned Counsel for the Applicant and the learned A.P.P. for State. The application for anticipatory bail made by the Applicant has been rejected by the Sessions Court. Offence registered against the Applicant is under Sections 328, 376, 366, 344, 504 read with Section 34 of the Indian Penal Code.

2. The facts leading to filing of this application are peculiar. The the age of the complainant is 21 years. The F.I.R. has been lodged by the complainant-prosecutrix on 22nd July 2005. In the F.I.R. itself her age is disclosed as 21 years. The case made out by the complainant is that on 11th April 2005 when she was called to the house of the Applicant under the pretext of collecting ornaments, she was given a glass of water which was mixed with some drug, as a result of which she became unconscious. When she regained consciousness she found that the Applicant, his parents and his sister were sitting there. On 12th April 2005, she was given threats by the Applicant and his family members and was forced to sign Nikahnama. Her allegation is that thereafter the Applicant had

sexual intercourse with her. Thereafter she was taken to Aurangabad and kept in a room. Thereafter she was brought back from Aurangabad and kept in a room in the house of the Applicant at Wadala, Mumbai till 7th May 2005 where the Applicant had forcible intercourse with her. On 7th May 2005 her brother brought police to the house of the Applicant when the Applicant himself dropped the Applicant to the Police Station on his own motor cycle. Thereafter, the Applicant was taken by her father to Ahmedabad.

3. An application was made by the Applicant under Section 97 of Code of Criminal Procedure, 1973 as his case was that the complainant-his legally wedded wife was kept in unlawful confinement by her father. The complainant has appeared before the Chief Judicial Magistrate, Nashik and stated that she was desirous of living with her parents and accordingly, the Application was disposed of on 18th July 2005. Four days thereafter, F.I.R. has been lodged.

4. The Applicant has annexed copies of Halafnama and Nikahnama as well as certificate of registration of marriage. Certain photographs are annexed of the Applicant with the prosecutrix along with family members of the Applicant. As stated earlier the age of the prosecutrix is admittedly 21 years. Even going by the assertions made in the complaint, the complainant was residing with her parents from 7th May 2005 and she has lodged the complaint only on 22nd July 2005. There is no explanation why she did not make any grievance about commission of any offence on 7th May 2005 when she was taken to Police Station at

the instance of her brother. There is no explanation for delay of 75 day in lodging F.I.R. from 7th May 2005. At this stage, the theory propounded by the Applicant of the consent of the prosecutrix to the marriage as well as the subsequent sexual intercourse with her consent cannot be ruled out. In view of clear facts of this case and gross delay in filing the F.I.R. coupled with the conduct of the prosecutrix, it is obvious that the Applicant will be subjected to unnecessary harassment if he is arrested. It is to be noted there that even the Sessions Court has noted that A.C.P. has recorded the statement of the prosecutrix in Bhadrakali Police Station in which she stated that she has willingly married to the Applicant and was residing with him. Hence case for grant of anticipatory bail is made out. The presence of the Applicant for investigation secured by imposing stringent conditions.

5. Hence, I pass the following order :

i) In the event of the arrest of the Applicant in connection with C.R.No.205 of 2005 registered with Bhadrakali Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- (Rupees fifteen thousand only) with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station on every day from 6th August 2005 till 12th August 2005 between 4.00 p.m. to 7.00 p.m. and will cooperate for the purpose of investigation.

Thereafter, the Applicant will attend the concerned Police Station as and when called upon to do so till filing of the charge sheet.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE